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BEFORE THE FEDERAL ELECTION COMMISSION

2011 JUL 26 AM 9:01

In the Matter of

2011 JUL 25 A 9:59)

MUR 6428

BILL MARCY FOR CONGRESS AND

DAVID J. BOOLOS, AS TREASURER

WILLIAM L. MARCY

) DISMISSAL AND

) CASE CLOSURE UNDER THE

) ENFORCEMENT PRIORITY SYSTEM

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GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria to allocate its resources and decide which cases to pursue. These criteria include, but are not limited to, an assessment of (1) the gravity of the alleged violation, both with respect to the type of activity and the amount in violation, (2) the apparent impact the alleged violation may have had on the electoral process, (3) the legal complexity of issues raised in the case, (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended ("Act"), and (5) development of the law with respect to certain subject matters. It is the Commission's policy that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss certain cases. The Office of General Counsel has scored MUR 6428 as a low-rated matter and has also determined that it should not be referred to the Alternative Dispute Resolution Office. This Office therefore recommends that the Commission exercise its prosecutorial discretion to dismiss MUR 6428.

In this matter, complainant Precious T. Martin, Sr. alleges that Bill Marcy for Congress and David J. Boolos, in his official capacity as treasurer ("the Committee"), and candidate William L. "Bill" Marcy¹ violated "the letter and spirit of our campaign and

¹ Mr. Marcy was an unsuccessful candidate for Congress from Mississippi's Second Congressional District.

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1 election laws” by failing to include proper disclaimers on billboards and newspaper
2 advertisements, as required by 2 U.S.C. §§ 441d(a) and (c) and 11 C.F.R. §§ 110.11(a)-(c).
3 Appended to the complaint are photographs of two billboards, one of which is included in a
4 news story about Mr. Marcy dated August 25, 2010. The billboard includes the phrase “Paid
5 for Bill Marcy for Congress” [sic], which does not appear to be enclosed in a printed box.
6 The photograph of the second billboard, which is apparently a screenshot from a news video
7 dated September 3, 2010, includes the phrase “Paid for by the Committee to Elect Bill
8 Marcy,” which is also not enclosed within a printed box.

9 In addition, the complaint includes a photocopy of a newspaper advertisement from
10 *The Carthaginian* newspaper of Carthage, Mississippi, dated September 2, 2010, which
11 includes the text “Vote November 2, 2010 ✓Bill Marcy US Congress.” The advertisement
12 also includes the campaign’s website address and the name of the campaign’s Facebook
13 page, but does not include a disclaimer including the specific “paid for by” language. The
14 only reference to payment for the advertisement appears at the bottom, with the phrase “Paid
15 Political Advertising” printed in what appears to be 8-point type size or less.²

16 The complainant also maintains that candidate Bill Marcy and the Committee failed
17 to comply with the Act’s “registration and reporting requirements.” Specifically, the
18 complainant asserts that Mr. Marcy failed to file a Statement of Candidacy within fifteen
19 days after he attained candidate status by spending or receiving more than \$5,000 in
20 connection with his federal campaign, as set forth in 2 U.S.C. §§ 431(2)(A) and 432(e)(1).

² Although the photographs of the second billboard and the newspaper advertisement that were provided with the complaint are difficult to read, we were able to locate what appear to be legible versions on the Internet at <http://www.bing.com/videos/watch/video/bill-marcy-billboard/1d0hg4sa8> and <http://media.irsnetwork.com/contentitempdf/pdfs/182000/182896.pdf%5CISearch=%5Cmarcy>. For the Commission’s convenience, we have scanned these images into the MUR 6428 Voting Ballot Matters folder.

1 and 11 C.F.R. §§ 100.3(a) and 101.1(a), and that the Committee, in turn, failed to file a
2 Statement of Organization within ten days thereafter, as required by 2 U.S.C. § 433(a) and
3 11 C.F.R. § 102.1(a). Finally, the complainant alleges that the Committee failed to file
4 financial reports disclosing expenses incurred for campaign advertisements, including the
5 billboards and newspaper advertisement alluded to above, as well as expenditures for at least
6 one campaign website and two rented campaign offices, as required by 2 U.S.C. § 434(a).

7 David J. Boulos, treasurer of Bill Marcy for Congress, and candidate Bill Marcy both
8 filed responses. In his response, Mr. Boulos states that the Committee filed financial
9 disclosure reports, which are reflected on the Commission's website, including the 2010
10 October Quarterly Report, the 12-Day Pre-General Report, and the 30-Day Post-General
11 Report. These reports included itemized expenditures for political advertising, including
12 website costs, and newspaper, radio and television advertising. With respect to the costs of
13 the Marcy campaign's billboards, Mr. Boulos refers to an enclosed copy of the Committee's
14 30-Day Post General Report, which includes disbursements for "billboard advertising" to
15 Lamar Advertising of \$600 on October 29, 2010 and \$2,100 on November 1, 2010, for a total
16 expenditure of \$2,700.

17 As to the lack of reported expenditures for office space, Mr. Boulos responds that the
18 Marcy campaign utilized Mr. Marcy's home as its campaign office and, on its website,
19 directed campaign contributions to Mr. Boulos's office. Mr. Marcy's response was similar to
20 Mr. Boulos's, except that, according to Mr. Marcy, campaign contributions were directed to
21 his home and office, as well as Mr. Boulos's office. Neither he nor Mr. Boulos responded to
22 the remaining issues raised by the complainant, including the allegedly defective disclaimers
23 or late-filed Statements of Candidacy and Organization.

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1 Political committee campaign materials that require disclaimers include, *inter alia*,
2 billboards and newspaper advertisements, *see* 2 U.S.C. § 441d(a); *see also* 11 C.F.R.
3 § 110.11(a). Such communications must clearly state that they have been paid for by the
4 committee and, in addition, must comply with the additional specifications for printed
5 materials, including the requirement that the disclaimer be set apart from the remainder of the
6 communication in a printed box. *See* 2 U.S.C. §§ 441d(a) and (c); *see also* 11 C.F.R.
7 §§ 110.11(b) and (c). In this matter, it appears that the newspaper advertisement lacked a
8 disclaimer stating that the Committee had paid for it, and the disclaimers on the billboard
9 advertisements did not include the Committee's correct name. In addition, the disclaimers on
10 the billboards were not enclosed within printed boxes.

11 Further, upon reviewing the Committee's first financial disclosure report, its 2010
12 October Quarterly Report, it appears that Mr. Marcy expended over \$5,000 in connection
13 with his campaign no later than August 3, 2010 and, therefore, became a candidate by that
14 date.³ As such, Mr. Marcy should have filed his Statement of Candidacy no more than 15
15 days later, or by August 18, 2010, and his Committee should have filed its Statement of
16 Organization within 10 days thereafter, or by August 28, 2010. However, according to the
17 Commission's website, the Committee did not file its Statement of Organization until
18 September 8, 2010, and Mr. Marcy did not file his Statement of Candidacy until October
19 18, 2010. Thus, both were apparently filed untimely.

20 It appears that the campaign advertisements at issue contained sufficient identifying
21 information so that the public would not have been misled as to whether the Marcy campaign

³ Specifically, the report discloses the following disbursements: \$1,052.88 on February 26, 2010, \$300 on June 30, 2010, two disbursements totaling \$1,500 on July 6, 2010, and \$3,250 on August 3, 2010, for a total of \$6,102.88 in disbursements by August 3, 2010.

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1 had sponsored them. In addition, the Committee's financial disclosure reports include
2 itemized disbursements for political advertising, including the billboard, newspaper, and
3 Internet web site advertising mentioned in the complaint. Accordingly, under EPS, the
4 Office of General Counsel has scored MUR 6428 as a low-rated matter and therefore, in
5 furtherance of the Commission's priorities, as discussed above, the Office of General
6 Counsel believes that the Commission should exercise its prosecutorial discretion and
7 dismiss this matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985). Additionally, this Office
8 recommends that the Commission remind William L. Marcy of the requirement to timely file
9 his Statement of Candidacy, pursuant to 2 U.S.C. § 432(e)(1), and remind Bill Marcy for
10 Congress and David J. Boolos, in his official capacity as treasurer, of the requirements under
11 2 U.S.C. §§ 441d(a) and (c) and 11 C.F.R. §§ 110.11(a)-(c) concerning the use of appropriate
12 disclaimers, and the requirements under 2 U.S.C. § 433(a) concerning the timely filing of its
13 Statement of Organization.

14 RECOMMENDATIONS

15 The Office of General Counsel recommends that the Commission dismiss MUR
16 6428, close the file, and approve the appropriate letters. Additionally, this Office
17 recommends that the Commission remind William L. Marcy of the requirement to timely file
18 his Statement of Candidacy, pursuant to 2 U.S.C. § 432(e)(1), and remind Bill Marcy for
19 Congress and David J. Boolos, in his official capacity as treasurer, of the requirements under
20 2 U.S.C. §§ 441d(a) and (c) and 11 C.F.R. §§ 110.11(a)-(c) concerning the use of
21 appropriate disclaimers, and the requirements under 2 U.S.C. § 433(a) concerning the
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timely filing of its Statement of Organization.

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